



taylor | english
the purpose-built law firm®

NONPROFIT INSOLVENCY & BANKRUPTCY

John W. Mills
June 3, 2020



Mission of Pro Bono Partnership of Atlanta:

To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals. We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

Pro Bono Partnership of Atlanta Eligibility & Other Information

- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
 - ✓ Be a 501(c)(3) nonprofit.
 - ✓ Be located in or serve the greater Atlanta area.
 - ✓ Serve low-income or disadvantaged individuals.
 - ✓ Be unable to afford legal services.
- *Visit us on the web at www.pbpatl.org*
- We host free monthly webinars on legal topics for nonprofits
 - ✓ To view upcoming webinars or workshops, visit the [Workshops Page](#) on our website
 - ✓ Join our mailing list by emailing rla@pbpatl.org

Legal Information:

- ✓ This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.
- ✓ © 2020. Pro Bono Partnership of Atlanta, Inc. All rights reserved. No further use, copying, dissemination, distribution or publication is permitted without express written permission of Pro Bono Partnership of Atlanta.

Can The Organization Be Saved?

Understand the Numbers

- Identify Records
- Identify Income
- Identify Assets
- Identify Operating Expenses
- Identify Long Term Liabilities
- Identify Taxes

Identify Financial Records

Basic Documents

- Ledgers
- Bank Statements
- Receipts for Paid Services
- Canceled Checks/Deposit Slips
- Other

Identify Financial Records

Summary Records

- Balance Sheet, Income Statement, or Cash Flow Statement
- Audit, Review or Compilation
- Appraisals of Assets
- Form 990
- Are These Records Current?

Identify Financial Records

Who Knows The Numbers?

- Board of Directors (or a Committee of the Board)
- Officers
- Employees
- Others (Volunteers? Outside Professionals?)

Identify Income

Sources

- Grant Funds
- Donations
- Paid Services
- Endowment Funds
- Other Income (Passive Income? Sales?)

Identify Income

Conditions and Use

- Are there restrictions on use of income?
- Are there employees tied to any income source?
- How are the funds from each income source used?

Identify Income

What Has Changed?

- Try to go back 5 years for each income source

Identify Assets

What Does the Organization Own?

- Real Estate
- Personal Property
 - * Tangible – e.g., vehicles, equipment
 - * Intangible – e.g., notes receivable

Identify Expenses

Monthly Operating Expenses

- Real Estate – Lease/Mortgage
- Payroll
- Utilities
- Equipment/Vehicles (e.g., computers, copiers)
- Revolving Lines or Other Unsecured Credit
- Insurance (D&O, Liabilities, Property & Casualty)
- Maintenance
- Other

Identify Expenses

Contracts and Leases

- Vehicles/Equipment Leases
- Employment Contracts
- What are remedies for breach? Liquidated damages?

Identify Long Term Liabilities

What Loans Has The Organization Taken?

- Real estate mortgages
- Vehicle or other personal property loans
- Other

Identify Taxes

Are Tax Payments Current?

- Real Estate Taxes
- Sales and Use Taxes
- Payroll Taxes
- Unrelated Business Income Taxes

Identify Taxes

Tax Alert!! Keep Taxes Current!!

- There may be personal liability for officers and directors for payroll, sales and unrelated business income taxes

Analysis of the Options

Assets

- Refinance
- Sale
- Replacement of Aging Equipment/Vehicles (for possible efficiencies)
- Deed in Lieu of Foreclosure (depending upon how assets are held)

Analysis of the Options

Expenses – Rent Reduction

- Landlord Negotiations (30% vacancy rates or more on commercial space – 5 years of inventory)
- Space Reduction or Space Sharing (terms of lease may drive the decision)

Analysis of the Options

Expenses – Operations

- Look at everything
- Space Sharing could lead to shared office equipment expenditures (and shared employees)

Analysis of the Options

Expenses – Employees

- Salary Reduction/Part Time/Elimination (Are any employees tied to grant or other monies?)
- Reduced Benefits
- Use of Independent Contractors in lieu of full time employees
- Employee Sharing
- Expand use of volunteers

Analysis of the Options

Other Options – Be Creative!

- Look at ways to increase income (e.g., activities to increase donations)
- Merger/Strategic Alliance

Analysis of the Options

Bankruptcy/Liquidation Options

- Chapter 7 Bankruptcy Case
- Chapter 11 Bankruptcy Case
- Wind-Up Under State Law
- Assignment for the Benefit of Creditors

BANKRUPTCY – CHAPTER 7

- Straight liquidation of all assets and ends the operation of the non-profit.
- This will be the most likely bankruptcy option.

BANKRUPTCY – CHAPTER 11

- Chapter 11 bankruptcy case allows a business to continue operations in order to reorganize, or liquidate in an orderly fashion.
- Business **MUST** be able to pay its current operating expenses such as rent, utilities, payroll, etc.

BANKRUPTCY – CHAPTER 11

- Chapter 11 reorganization case will generally not be an option because cash flow will not support continued operations, even in the absence of debt service.
- May make sense if another entity seeks to purchase assets free and clear of lien, claims, and encumbrances while the target entity continues operations.

WIND-UP

- Wind-up under state law is possible
- Requires statutory notification to all creditors that the board has determined to end the operations of the entity.
- Can be time consuming due to statutory notification periods,
- Can be less costly than filing a bankruptcy case.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS

- Entity assigns all of its right, title, and interest in assets to a fiduciary, who will liquidate the assets through state court procedures.
- Similar to a chapter 7 bankruptcy case.
- Fiduciaries will charge a fee, which is not cheap.
- This option is usually not viable because of the fiduciary fee.

“Take Aways”

Understand the Numbers – That is Key to
Determining What Options are Available

Pay All Taxes – Directors and Officers May Have
Personal Liability for Unpaid Taxes

Questions?



For More Information:

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

www.pbpatl.org

info@pbpatl.org

(404) 618-0900